No. 232.

Reply Brf. of Davenport & Co

Appellants

Filed Nov. 20, 1899.

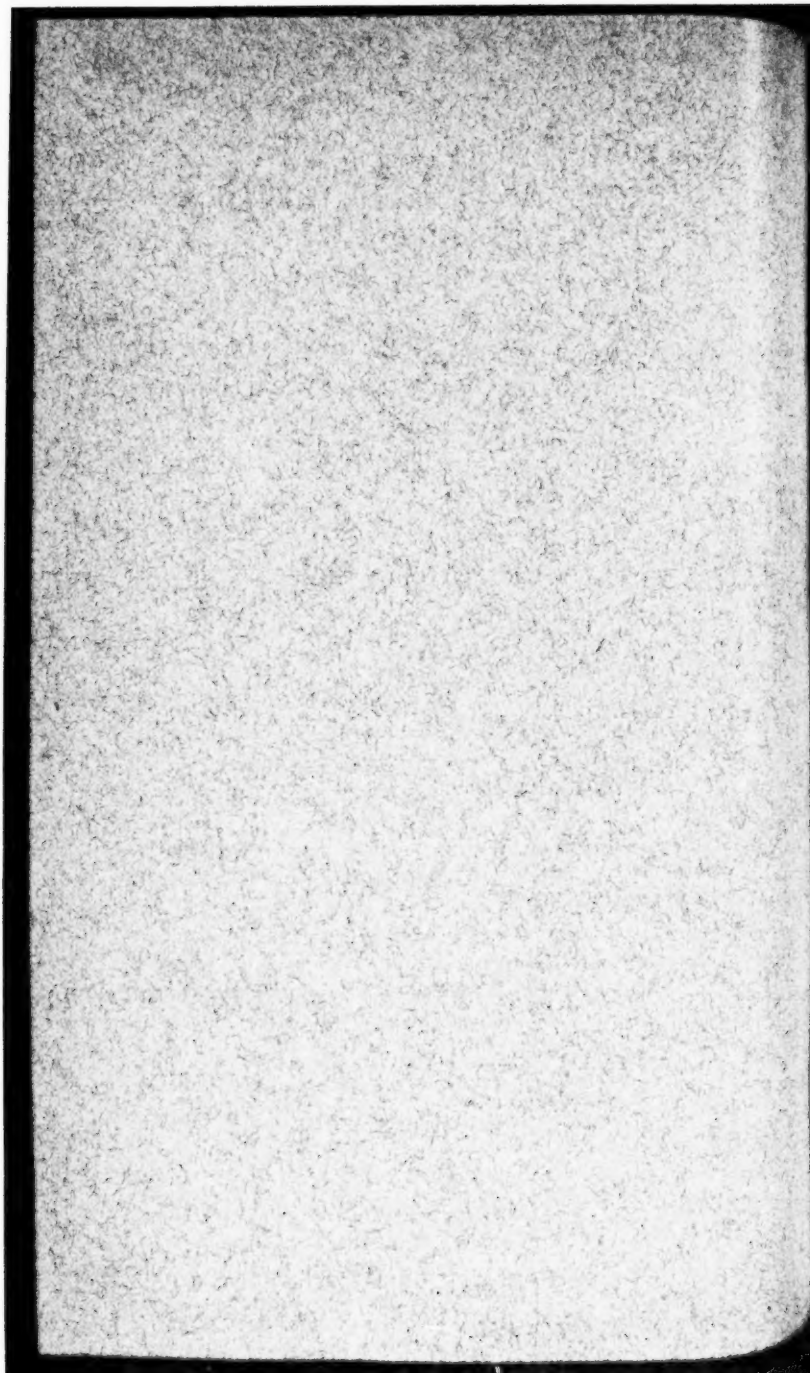
In the Supreme Court of the United States,

OCTOBER TERM, 1899.

WILLIAM J. CRUIKSHANK AND OTHERS,
Appellants,
against
GEORGE R. BIDWELL, COLLECTOR OF CUSTOMS FOR THE PORT OF NEW YORK,
Appellee.
} No. 232.

BRIEF FOR APPELLANTS IN REPLY TO BRIEF ON BEHALF OF WILLIAM J. BUTTFIELD AND OTHERS.

The Evening Post Job Printing House, New York.



Supreme Court of the United States.

WILLIAM J. CRUICKSHANK and others,
Appellants,

AGAINST

GEORGE R. BIDWELL,
Appellee.

APPELLANT'S BRIEF IN REPLY TO BRIEF FILED ON THE PART OF BUTTFIELD AND OTHERS.

I.

Inasmuch as the gravamen of plaintiff's complaint is the injury done to their rights and business, by the threat and intention of the defendant, admitted by the demurrer, to enforce the *whole* law as to purity, quality and fitness for consumption, against our imports in future, leaving us no remedy but a multiplicity of suits against him, the whole of the act, including the word "quality," is directly in discussion in this case, and cannot be avoided.

The fact that, as to the five different invoices which he has already seized, we do not specify that quality alone was the objection, therefore, does not apply to the allegation as to future imports, and would not justify the Court, as suggested by appellees, in refusing to consider the word "quality," even if the act could be dissected and the three words considered apart.

Appellants must concede, therefore, as they also contend, that the word "quality" is in discussion.

II.

Even if the construction of the word "quality," asked by Buttfield and others, is given to it, it will not validate the act, for the reason that the same legislative discretion as to the degree of quality remains under the absolute control of the board of experts.

It is difficult to understand Buttfield's theory of giving it some force, while giving it none at the same time. It seems to be found in the statement on page 22, "quality is only presumptive evidence of purity or fitness for consumption." Purity and fitness for consumption are themselves qualities. What the other quality is, and its degree, remains just as broad in its signification, as free in its discretion, and as impossible of defining by anything, either express or implied in the statute, as it was before.

III.

Counsel for the Government in Buttfield *v.* Bidwell, contended for the full, common sense, obvious and unquestionable force of the word. We are unable to improve upon the argument, and submit quotations as follows:

> "The word 'quality' in the Act of 1897 means something more than purity and wholesomeness."

"(*a.*) The complainant concedes that if the word "quality" be given its natural meaning, it is fully as broad as we contend. His leading affiant, Mr. Lester, states its technical meaning in the tea trade to be as follows (p. 73):

> Quality as determined by the customs and usages of the tea trade includes all the attributes of tea which affect the tea's market value, including style or appearance of dry leaf, size or brokenness of leaf, flavor, strength and body of cup or drinking quality, quality of leaf itself, which depends on its youngness, soil in which it is grown, climatic influence and season of the year in which it is picked [&c.].

"The term quality is a very familiar one in the English language. It is not synonymous with wholesomeness. It does not represent hygienic qualities. It represents the attributes of an article in their widest scope. No broader jurisdiction

could be given over any article than by giving power to regulate its quality.

Webster gives the definition as follows: "The condition of being of such and such a sort as distinguished from others; nature or character relatively considered, as of goods; character; sort; rank."

Worcester says: "The nature of a thing relatively considered; property of a thing; attribute."

The Century's corresponding definition is: "Degree of excellence or fineness; grade; as, the food was of inferior quality; the finest quality of clothing."

There are many other derivative definitions in the dictionaries, but these are the definitions most closely applicable to the present case.

It being thus conceded that both the trade definition and the dictionary definitions of the word are broad enough to cover the meaning which the Treasury Department attaches to it, it follows that there is no ambiguity in the statute."

"(*b*.) Since then there is no ambiguity in the statute, and since it does not offend the moral sense or involve any injustice, oppression or absurdity, it must be interpreted in accordance with its plain meaning, which cannot be changed by any judicial rules of construction (United States *vs.* Goldenberg, 168 U. S., 95, 103). "It is not permitted to interpret what has no need of interpre-

tation" (Vattel, quoted by Chancellor Kent in Jackson *vs.* Lewis, 17 Johns., 475, 477). "It is safer to adopt what the Legislature have actually said than to suppose what they meant to say" (Jones *vs.* Smart, 1 T. R., 51, quoted in United States *vs.* Chase, 135 U. S., 255, 262). Chief Justice Marshall in Sturges *vs.* Crowninshield, 4 Wheat., 122, 202-3, lays down the rules as follows, in their application of the Constitution of the United States:"

> Where words conflict with each other, where the different clauses of an instrument bear upon each other, and would be inconsistent unless the natural and common import of words be varied, construction becomes necessary, and a departure from the obvious meaning of words is justifiable. But if, in any case, the plain meaning of a provision, not contradicted by any other provision in the same instrument, is to be disregarded, because we believe the framers of that instrument could not intend what they say, it must be one in which the absurdity and injustice of applying the provision to the case would be so monstrous that all mankind would, without hesitation, unite in rejecting the application.

In the Goldenberg case above cited, at pp. 102-3, Mr. Justice Brewer said:

> The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. He is presumed to know the meaning of words and the rules of grammar.

"(*c.*) Buttfield argues that the word "quality" should be construed as if it read "wholesomeness." But an article without wholesomeness is an article without fitness for consumption. Hence the word "quality" would be given no meaning in the act if complainant's construction were adopted, and this would violate one of the cardinal rules of construction, stated in Market Co. *v.* Hoffman, 101 U. S., 112, 115-6:

> It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word. As early as in Bacon's Abridgment, Sect. 2, it was said that "a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence or word shall be superfluous, void, or insignificant." This rule has been repeated innumerable times.

The application of this rule is especially striking when it is borne in mind that the statute as originally drawn contained only the words "purity and fitness for consumption," and that the word "quality" was subsequently inserted by amendment."

"(*d.*) That the word "quality" should be given its ordinary trade meaning and that it was intended to have especial reference to the test by the taste of the infusion, is shown by the context. Sec. 7 of the statute ends with the following words:"

* * *

> The purity, quality and fitness for consumption of the same shall be tested according to the usages and customs of the tea trade, including the testing of an infusion of the same in boiling water, and, if necessary, chemical analysis.

"(*e.*) The word "uniform" in the statute has no bearing on the question. It is not repugnant to the existence of a separate standard for each general class of teas, any more than constitutional provisions for uniformity of taxes are repugnant to the existence of separate taxes on separate subjects of taxation. Even were wholesomeness the sole object sought by this statute, the standard for green tea would have to differ from the standard for black."

"(*f.*) The fact that the title of the statute is narrower in scope than the statute itself is immaterial. The title may be used in construing a statute when the body of the statute is ambiguous; but the ambiguity must be found in the word to be construed or in its context, and not in the title. One of the latest expressions of this familiar rule is in United States *v.* Oregon & California R. R. Co., 164 U. S., 526, 541:"

> The title is no part of an act and cannot enlarge or confer powers, or control the words of the act unless they are doubtful or ambiguous. * * * The ambiguity must be in the context and not in the title to render the latter of any avail.

In Hadden *v.* The Collector, 5 Wall., 107, 110, Mr. Justice Field said:

> At the present day the title constitutes a part of the act, but it is still considered as only a formal part; it cannot be used to extend or to restrain any positive provisions contained in the body of the act. It is only when the meaning of these is doubtful that resort may be had to the title, and even then it has little weight. It is seldom the subject of special consideration by the Legislature.
>
> These observations apply with special force to acts of Congress. Every one who has had occasion to examine them has found the most incongruous provisions, having no reference to the matter specified in the title [citing instances].

"It is quite common for the title of a statute to be narrower than the statute itself; and the reason often is (as we shall show to be the fact in the present case) that the original bill while in its progress through Congress is broadened by amendment without a corresponding amendment to the title.

Perhaps the most familiar instances in the Federal courts are in the sub-titles or headings of the tariff acts, which are so often absurdly insufficient to cover the articles therein enumerated. Thus sponges used to appear under the heading of "Chemicals, Oils or Paints," and cork under "Flax, Hemp and Jute" (21 Atty.-Gen. Opin., 67; Hollender *v.* Magone, 149 U. S., 586, 591; Seeberger *v.* Schlesinger, 152 U. S., 581, 583)."

IV.

The fact that the act attempts to require us to manufacture teas and select our importations so as to meet such rule of quality as may be prescribed under this act, demonstrates that no vague, ingenious or strained construction can be put upon a word which, when our teas arrive, is to be referred to for the question of their exclusion or destruction, and which is to be the guide of examiners and appraisers having absolutely arbitrary power, without hearing and without appeal.

V.

The filing of this intervening brief by a number of merchants demonstrates that the operation of the act, owing to its arbitrary character, is oppressive.

JOHN S. DAVENPORT,
Of Counsel for Appellants.

No. 232.

Brief of Bishop for interested parties (by leave.

Filed Nov. 10, 1899.

In the Supreme Court of the United States,

OCTOBER TERM, 1899.

WILLIAM J. CRUIKSHANK AND OTHERS,
Appellants,
against
GEORGE R. BIDWELL, COLLECTOR OF CUSTOMS FOR THE PORT OF NEW YORK,
Appellee.
} No. 232.

BRIEF ON BEHALF OF WILLIAM J. BUTTFIELD, T. A. SHEFFIELD & COMPANY, JOSEPH LESTER & COMPANY, WILLIAM P. ROOME AND OTHERS, INTERESTED IN THE IMPORTATION OF TEAS AT THE PORT OF NEW YORK.

The Evening Post Job Printing House, New York.

In the Supreme Court of the United States.

WILLIAM J. CRUIKSHANK and others,
Appellants,

AGAINST

GEORGE R. BIDWELL, Collector of Customs for the Port of New York,
Appellee.

Brief on behalf of William J. Buttfield, T. A. Sheffield & Company, Joseph Lester & Company, William P. Roome and others interested in the importation of teas at the port of New York.

William J. Buttfield and others have filed a petition in this Court for leave to be heard upon this appeal for the purpose of presenting to the Court what they regard as the true construction of the act entitled "An Act to prevent the importation of impure and unwholesome teas" which construction alone, as they contend, will support the constitutionality of the act.

Briefly stated the claim of these parties is that the act in question is a health law designed to prevent the importation of teas which are unwholesome, and the word "quality" as used in the act

has reference only to those qualities of tea which have relation to its wholesomeness as an article of food.

The claim has been and is made on behalf of those representing the Government that the Secretary of the Treasury is authorized by this act to establish standards of quality of teas upon the ground of grade or general excellence, irrespective of the wholesomeness of the tea or its fitness for consumption, and that all teas entitled to be imported must he equal to the standards so fixed in quality, that is in general excellence irrespective of their wholesomeness, as shown by their purity, quality or fitness for consumption.

If this construction of the statute is to be adopted we agree with the appellant that the act is unconstitutional.

If, however, the construction for which we contend be adopted, then we agree with the respondents that the act is constitutional.

We now proceed to present to the Court the considerations which seem to us to call for the construction of the act for which we contend :

I.

The construction of the act contended for by the Government and adopted in the administration of the act empowers the Secretary of the Treasury to establish standards of the general excellence or grade of teas which may be imported, and excludes from import all teas which are not equal to the standards in general excellence or grade.

(1) It has been practically conceded in the liti-

gation arising under this act that the statute is not regarded by the Government merely as a health regulation. The standards are established not merely to prevent the importation of teas which are unwholesome as an article of food, but largely to regulate the general excellence of teas brought into the country.

(2) The regulations promulgated by the Secretary of the Treasury under the authority of Section 10 of the act direct the officials to exclude teas which are not equal to the standards in "cup quality," that is in taste and flavor, although superior to the standards in the other qualifications that is in purity and fitness for consumption (Treasury Department Regulations, p. 35).

The same regulations direct the officials to reject teas which are otherwise equal to the standards in every particular, provided the particles of tea are of a size not sufficient to pass through a prescribed screen (Regulations, p. 35). This Court takes judicial notice of these regulations (Caha *v.* U. S., 152, U. S., 211, 221.)

(3) The counsel for the Government in this and other cases have contended that the insertion of the word "quality" into this act gives and was intended to give power to exclude teas, although not demonstrably or, in fact, impure or unwholesome. Mr. Whitney, of special counsel for the Government, contended in the case of Buttfield *v.* Bidwell, as follows:

> "The term quality is a very familiar one in "the English language. It is not synonymous "with wholesomeness. It does not represent "hygienic qualities. It represents attributes "of an article in their widest scope. No "broader jurisdiction could be given over any "article than by giving power to regulate its "quality.

It was urged that this extended signification of

the word quality included the authority to exclude the "lowest grades of tea," although not demonstrably or even in fact impure or unwholesome. This may be conceded. But such extended signification also includes the power to exclude any and every kind of tea. The act does not in terms prohibit the importation of the "lowest grades of tea." It does not either expressly or by implication confine exclusion to the "lowest grade of tea," unless the implication is found in the purpose of the act or the relation of the word "quality" to its associate words "purity and fitness for consumption." But if by implication the word "quality" is thus limited, then manifestly it does not as used in this act represent the attributes of tea in their widest scope. Then as used in the act it is a word of limited signification and the limitation is found in the purpose and language of the enactment. Neither of these indicate any other qualification of the word quality except wholesomeness. Hence the Secretary of the Treasury is authorized to establish standards upon the attributes of tea in their widest scope or he is limited to the establishment of standards of wholesomeness only. And the circumstance that under the former construction he may exclude teas of the lowest grade is of no significance since he may also upon that construction exclude teas upon an indefinite number of other and unallied grounds.

II.

The construction of the statute contended for by the Government renders it unconstitutional and void.

(1) If the word "quality" refers to the general excellence of the tea, then the statute establishes

no rule for the exclusion of teas, but confers upon the Secretary of the Treasury the authority to establish the rule. He may fix the standard of quality by the market value, by the size of the leaf, by the flavor, by the strength, or by each and every attribute of the tea separately, or by all of them combined. He may exclude all teas except the most costly or the most delicate, or he may permit the introduction of every shade and variety of tea. The subject is thus turned over to him in its entirety for legislative action.

(2) Congress could not confer upon the Secretary of the Treasury the authority to enact a rule of action. That is the essence of legislation.

The authority to regulate commerce is conferred by the Constitution upon Congress and not upon the Secretary of the Treasury. Congress, therefore, could not confer upon the Secretary of the Treasury authority to regulate commerce. It can only authorize him to administer such rules of law upon the subject as Congress may prescribe.

It follows that Congress did not, because it could not, confer upon the Secretary of the Treasury the power to declare what tea should be imported into the United States. Congress could and did confer upon the Secretary the administrative power to ascertain what particular teas fall within the prohibition of the statute. There must, then, be a prohibition in the statute which is definite or which is capable of application. Such a prohibition can be found only by giving to the word "quality" a limited signification. Otherwise the statute confers upon the Secretary of the Treasury the authority to determine what kind of teas may be imported. The distinction between the authority to declare what the law shall be and an authority to execute the law, even with a wide range of discretion, is clear. It has been frequently recognized and is regarded as essential, under our constitutional form of government.

In Field *vs.* Clark, 143 U. S., 649, 692, 694, speaking of the line of distinction between legislative power and executive action Mr. Justice HARLAN quoting the opinion in R. R. Co. *vs.* Commissioners, 1 Ohio State, 88, said: "The true distinction is between the delegation of power to make the law which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made."

So in Miller *vs.* Mayor, 109 U. S., 385, the Court said:

"The efficacy of the act as to the declaration of legislative will must, of course, come from Congress, but the ascertainment of the contingencies upon which the act shall take effect may be left to such agencies as it may designate."

Thus Congress cannot confer upon the Secretary of War the power to determine when and where a bridge shall be built over the navigable rivers of the country (U. S. *vs.* Keokuk & Bridge Co., 45 Fed. Rep., 178). Though Congress may authorize a bridge in accordance with plans to be adopted by the Secretary of War (Miller *vs.* The Mayor, 109 U. S., 385). In the case last cited the Court said: "By submitting the matter to the Secretary, Congress did not abdicate any of its authority to determine what should or should not be deemed an obstruction to the navigation of the river. It simply declared that upon a certain fact being established, the bridge should be deemed a lawful structure, and employed the Secretary of War as an agent to ascertain that fact." It is unnecessary to examine the reported cases further.

If the statute directs the Secretary to establish standards of *quality* in the sense claimed by the defendants, in what respect is the will of the Legislature in any degree operative?

Nothing can be plainer than that, if the Secre-

tary of the Treasury has unlimited discretion to establish the qualities of teas which may be imported into the United States, he may determine what teas may be received without any limitation or restraint. This in effect turns the entire subject over to the Secretary of the Treasury, and leaves his will paramount and controlling. Such a construction of the statute defeats it.

The authorities on the constitutional question under the construction claimed by the government are referred to in the brief for appellant and need not be repeated. We concur in the position taken by the appellant upon that construction, but we insist that a construction is possible which will sustain the act and that such construction should be adopted.

IV.

The Court should adopt a construction of the act, if possible, which will sustain it as a constitutional and beneficial enactment.

If possible a construction should be given to the act which will render it free from constitutional objection, and if such construction can be found without doing violence to the fair meaning of the words, the Court will adopt it.

Grenada Co. *v.* Brogden, 112 U. S., 561, 269.

Marshall *v.* Grimes, 41 Miss., 27, 31.

V.

The act is a health regulation. The Secretary of the Treasury is empowered to establish uniform standards of teas which are wholesome as food, and the words "purity, quality and fitness for consumption" are all to be regarded as relative to the wholesomeness of the tea as food. In the adminstration of the act officials are to reject teas which are not equal to the standards in "purity, quality and fitness consumption" relatively to the wholesomeness of the tea as food, and not otherwise.

We shall consider *first* the purpose of the act as shown by the history of legislation leading up to and including this enactment, and *secondly* the proper construction as derived from the title and language of the act.

FIRST.—The purpose of the act as shown by the history of legislation.

(1) *Previous legislation upon kindred subjects.*

The first statute of the United States relating to the purity of imported articles is that concerning drugs and medicines (Act of June 26th, 1848, R. S. U. S., Sec 2933).

It provides that all drugs offered for import shall be examined in reference to "their quality, purity and fitness for medical purposes," and if, on examination, they are found to be inferior in strength and purity to the standards established by the United States, Edinburgh, London, French and German Pharmacopœias and Dispensatories" and

thereby improper, unsafe or "dangerous to be used for medical purposes" they are to be rejected. The Pharmacopœia and Dispensatories referred to are well-known national works, some of which are given the force of law in their respective countries. The American Pharmacopœia is the product of a national convention of medical societies held every ten years. These authorities are made the standards of the requisite strength and purity of imported drugs (Sec. 2936).

An examination of this act shows that its sole purpose was to regulate the importation of drugs so as to keep out such as are "improper, unsafe "or dangerous to be used for medicinal purposes." It was no part of its purpose to increase the market value of drugs or to restrict their importation upon any other ground than protection to public health and safety, and the word "quality" as used in that act is unquestionably used with that restricted signification.

In 1881 an act was passed in New York entitled "An Act to prevent the adulteration of food or drugs" (Laws of 1891, Chapter 407), in which the word "quality" is used.

This act embraced all articles of food or drink including teas (Laws of 1885, Ch. 176).

A similar statute in almost identical words was passed in Massachusetts in 1882 Laws of 1882, Ch. 263).

Similar statutes have been enacted in other States.

Statutes of the same general character have been enacted from time to time by Congress.

In 1884 an act was passed to prevent the exportation of diseased cattle, and to provide means for the suppression of pleuro-pneumonia and other contagious diseases among domestic animals (25 St. at L., 31).

In 1890 an act was passed to provide for the inspection of meats for exportation, and prohibiting the importation of adulterated articles of food and drink (26 St. at L., 414). The language of Sec. 2 is

as follows: "It shall be unlawful to import into the United States any adulterated or unwholesome food or drug or other spirituous or malted liquors adulterated or mixed with any poisonous or noxious chemical, drug or other ingredient injurious to health."

In 1891 an act was passed to provide for the inspection of live cattle and other animals which are the subject of interstate commerce which provides for the examination of carcasses and products and prevents the interstate transportation of such as shall not be found to be "free of disease, wholesome, sound and fit for human food."

Without multiplying instances of such legislation attention is called to two features found in every statute we have examined upon this subject.

1st. The restraint is always upon the importation of or traffic in an article because injurious to health or unfit for consumption.

2d. The statute fixes the rule of exclusion, and the rule is always the purity or wholesomeness of the article, and wherever the word "quality" is used it is used with reference to the purity or fitness of the article for consumption.

If in the tea legislation Congress has attempted to prevent the importation of teas upon the ground of their general excellence as shown by their taste and flavor irrespective of their purity and wholesomeness, then this legislation is a singular exception in legislation of this class.

(2) *The previous legislation upon this subject:*

The importation of teas was first regulated in England in 1875 by the passage of the act known as "The Sale of Food and Drugs Act." It provided for an inspection and an analysis of teas offered for import, and directed that if such teas were found "to be mixed with other substances or exhausted leaf" they shall not be delivered to the importer; but if, on inspection and analysis,

it shall appear that such tea is in the opinion of the analyst unfit for human food, the same shall be forfeited and destroyed.

The first act in this country was that entitled "An Act to prevent the importation of adulterated and spurious teas," approved March 2d, 1883. It rendered it unlawful for any person to import any merchandise for sale as tea "adulterated with spurious leaf, or with exhausted leaves, or which contained so GREAT an admixture of chemicals or other deleterious substances as to make it unfit for use," and prohibited the importation of such merchandise. If the tea examiner rejected the teas a re-examination was to be had before a committee of three experts—one to be appointed by the collector, one by the importer and the two to choose a third.

The system so established was manifestly liable to great abuse. It permitted the tea examiner to determine in each instance whether the tea offered contained, in his opinion, *so great* an admixture of deletorious substances as to make it unfit for use. The degree of impurity permissible might vary with different importations, or even in the same importation. The importer was thus without any guide in making his purchases, and the public was without certainty of protection against an article unfit for use.

The principal evil in the operation of the law was its unfairness to importers, who were unable to regulate their purchases abroad with safety.

(3) *The Act of 1897.*

The subject came before Congress in 1897, and a report was made by the Senate Committee on commerce, which is greatly relied upon by the Government as indicating that the act as finally passed was intended to confer upon the Secretary of the Treasury the power to establish standards of tea solely upon the basis of excellence or grade without regard to wholesomeness. It is true that the

word "quality" was introduced into the act between the words "purity and fitness for consumption" by an amendment to the bill in the Senate, and that the report of the Senate Committee shows that it was the intention of the act to provide for the establishment of standards "of the lowest grades of tea fit for use."

In referring to this legislation the Circuit Court of Appeals in Buttfield *v.* Bidwell made use of the following language:

> "As originally introduced in the House the "bill prohibited the importation of 'any mer- "chandise as teas which is inferior in purity "or fitness for consumption to the standards "provided in Section 3 of this act.' It was "amended in the Senate by inserting the word "'quality' between the words 'purity and fit- "ness for consumption' wherever they occurred "in the House bill. The amendment evinces the "intention of the Senate to authorize the adop- "tion of uniform standards by the Secretary "of the Treasury which would be adequate to "exclude the lowest grades of tea whether de- "monstrably of inferior purity or unfit for "consumption or presumably or possibly so "because of their inferior quality."

But the act does not contain the words "lowest grades of tea fit for use," and if the intention to exclude only the lowest grades of tea fit for use is expressed in the act it must be because the words "purity, quality and fitness for consumption" carry that meaning. Then the rule enacted by Congress was that teas were to be excluded which were unfit for use. The unfitness, however, is for use as food not arbitrarily but relatively to the wholesomeness as food.

What teas did Congress intend to exclude? Was it teas to be selected by the Secretary of the Treasury according to a rule or grade which he was to determine, or was it teas which were prescribed by a rule laid down by Congress? If the latter what was the rule laid down by Congress? Was it not

the wholesomeness of the tea—its fitness for use as food? It is impossible to find any other rule expressed in this statute. If this is not the rule then Congress conferred upon the Secretary of the Treasury the sole authority to establish the rule of exclusion, and the act is unconstitutional.

(4) *The object of the act of 1897 was to establish fixed standards of wholesomeness in place of the variable judgment of the inspector and tea experts under the former act.*

The purpose of the new legislation was not to change the classification of teas which were to be rejected, but to define the existing classification by fixed standards. The evil to be remedied was the want of such standards. The foremost feature of the new act was the establishment of such standards. The establishment of uniform standards was intended upon the one hand to obviate the injustice to the importer arising from uncertainty as to the admission of teas which he had purchased abroad, and on the other hand the protection of the consumer by the greater certainty that teas which were injurious and prejudicial to health should not be admitted.

The construction of the statute adopted by the Government is such as to render it a constant menace and peril to legitimate business in the importation of teas. A commission recently appointed by the Secretary of the Treasury to investigate the working of this statute in the city of New York has reported that under the operation of the Tea Act, which requires tests as to "purity, quality and fitness for consumption," teas which are of low grade, but are pure and wholesome, have been refused admission solely because they do not equal the standard in point of cup quality, strength and flavor. The commission reports that it is impossible to obtain uniformity of decisions as to the relative strength and flavor of tea, because determinations

upon those points differ widely with individual preferences.

That this is the result of the administration of the act is apparent from the official figures respecting the importation of teas. These figures show that the percentage of rejections for the years 1897–1898 at New York is more than four times greater than at Chicago, while in certain low grades of teas known as Pingsueys 16 per cent. of the total imports at New York have been rejected, while out of 22,582 packages imported at San Francisco none had been rejected. These facts are found in public Government records of which this Court will take judicial notice.

Kirby *v.* Lewis, 39 Fed, R., 66.
Gregg *v.* Fosyth, 24 How, 179.
Walker *v.* Holman, 16 Pet., 56.
Bryan *v.* Fosyth, 19 How, 338.

(5) *There was no occasion for legislation prohibiting the importation of teas merely upon the ground of their inferiority in taste or flavor, if not unwholesome or unfit for consumption.*

The consumption of tea as a beverage has never been regarded as injurious to public morals, nor can it be claimed that the finer and more costly grades of tea are less injurious to health than the coarser and cheaper grades. No such distinction has been or can be made. As a measure affecting public health and public morals there was no occasion, therefore, for the exclusion of any particular class of teas unless they were either unwholesome or fraudulent.

Nor can it be presumed that Congress intended to enact a law which was merely sumptuary. Federal legislation of that class has never been attempted It would be ridiculous and unreasonable to suppose that Congress intended by this legislation to permit the Secretary of the Treasury to determine the grade of tea which the American people were to be permitted to drink. Such an in-

tent would be as ridiculous as it would be for Congress seriously to attempt to establish the cost of the wine or the delicacy of the perfumes or the fineness of the silks which should be allowed to come into the country.

(6) If a radical change in the character of the legislature upon this subject was intended it is to be assumed that Congress would have expressed itself with definiteness and certainty.

The exclusion of teas unless equal to certain standards of excellence in taste and flavor would be the substitution of a measure or standard more difficult of application that the rule of exclusion under the former statute. To prevent it from working a hardship to the importer the gradation of importable teas would need to be fixed upon commercial lines with precision. It is impossible to believe that Congress intended to set up a system of the enforced rejection of teas upon lines of grade or excellence under the indefinite language employed in this statute.

SECOND.—The proper construction of the act as derived from its title and language.

(1) *The rule of construction applicable is that general words capable of an extended or of a limited signification should be given a signification in harmony with the purpose of the legislation.*

This rule of construction has been frequently stated and enforced.

Thus in U. S. *v.* Kirby, 7 Wall., 432, it is said:

"General Terms should be so limited in their "application as not to lead to injustice, oppres- "sion, or an absurd consequence. It will always, "therefore, be presumed that the Legislature in- "tended exceptions to its language which would "avoid results of this character. The reason of

" the law in such cases should prevail over the " letter."

So in U. S. *v.* Fisher, 2 Cranch, 399:

" Whenever the intention of the makers of a " statute can be discovered it ought to be followed " with reason and discretion in the construction of " the statute, although such construction seems " contrary to the letter of the statute. A thing " which is within the letter of a statute is not " within the statute, unless it be within the inten- " tion of the makers."

So in Brewer *vs.* Blonger, 14 Pet., 178:

" It is undoubtedly true it is the duty of the " Court to ascertain the meaning of the Legislature " from the words used in the statute, and the sub- " ject matter to which it relates, and to restrain " its operation within narrower limits than its " words import if the Court are satisfied that the " literal meaning of its words extend to cases which " the Legislature never designed to include in it."

Nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust and absurd conclusion.

Lau Ow Bew *v.* U. S., 144 U. S., 47, 59.
Church, &c., *v.* U. S., 143 U. S., 457.
Henderson *v.* Mayor, 92 U. S., 259.
U. S. *v.* Kirby, 7 Wall., 482.
Oatis *v.* Nat. Bank, 100 U. S., 239.

Two recent illustrations of the application of the rule in the Supreme Court may be referred to. In the case of Rev. Dr. Warren (Church of Holy Trinity *v.* U. S., 143 U. S., 457), it was claimed that the employment of Dr. Warren was within the prohibition of the Alien Contract Labor Law. The words of the act render it unlawful for any person to procure the migration of an alien into the United

States under contract "to perform labor or services of any kind in the United States." An examination into the purpose of the legislation led the Court to the conclusion that the labor of a clergyman, although within the express language of the statute, was not within its true meaning and intent.

In the case of Lau Ow Bew *v.* U. S., 144 U. S., 47, it appeared that Lau Ow Bew was a Chinese merchant, who had been domiciled in this country for a number of years. He returned to China, and subsequently sought to come into the United States, but was prohibited by the Collector of Customs at San Francisco, on the ground that he had neglected to produce the certificate mentioned in Section Six of the Chinese Restriction Act of May 6, 1892, as amended July 5, 1894.

The section referred to declares that "every "Chinese person other than a laborer who may be "entitled by said treaty or this Act to come within "the United States shall obtain the permission of "and be identified as so entitled by the Chinese "Government or such other foreign government of "which at the time such Chineseperson shall be a "subject," the permission and identification in such case to be evidenced by the certificate described. It was held that the words "about to come to the United States" must be read as meaning about to come to the United States for the first time.

The principles thus stated and applied require that the word "quality," since it is a word of abstract and relative meaning, should be given an interpretation in harmony with the purpose of the legislation.

(2) *The word "quality" is a relative and abstract word capable of a great variety of meanings dependent upon its relations to a particular subject.*

It is evident that "quality" may be used in the broad sense of general excellence, or it may be

used in a limited sense, referring to a particular attribute of a subject. We may speak of the quality of a tea, meaning its general excellence in taste or smell, or we may speak of a quality of tea having regard to its purity, wholesomeness and fitness for consumption. Whether we use the word quality in the one sense or in the other must be gathered from the connection in which the word is used.

(3) *The word "quality," therefore, under the rule of construction applicable, must be limited to the specific purpose of the act.*

If the word "quality" is capable of two or more different constructions, then that construction should be adopted which is consistent with the purpose of the act, and which is reasonable in its practical operations and just in its application. This is what we understand to be meant by the rule of construction referred to above.

(4) *The rule that each word in the statute is to be given a meaning is not violated by giving to the relative word "quality" a qualified meaning.*

It is urged by the defendants that the construction for which we contend practically obliterates the word "quality" from the statute, and that it must be assumed that the word "quality" was intended to add something to the other words employed—to wit, purity and fitness—for consumption. This rule, like every rule of construction, is to be used as a help in arriving at the intent of the Legislature. Here a general word was used which, taken in connection with the title and the manifest purpose of the legislation, was designed to give the Secretary of the Treasury the authority to fix and establish standards of wholesomeness, so that the teas should not only be of a fixed standard of purity and of a fixed standard of fitness for consumption, but also of a fixed standard of a general quality of wholesomeness having regard to its

healthfulness as a beverage. This places a needful limitation upon the authority to be exercised by the Secretary of the Treasury within which he may exercise a discretion, but beyond which he cannot go, and beyond which there is no necessity that he should go.

(5) Where a word has a variety of possible meanings, that meaning should be adopted which is reasonable, least restrictive of legitimate trade and least restrictive of common right and individual liberty.

The statute is highly penal. It works a forfeiture of property and imposes restrictions on trade. It should be construed strictly and its general terms should be restrained within the legitimate purpose to be served (Van Volkenburg *vs.* Terrey, 7 Col., 255; Smith on Construction, p. 854). No man should be deprived of his property in the summary manner provided in this statute, unless his act is brought within the plain meaning of the language employed.

Even if the construction of the statute contended for by defendants were not oppressive upon the importer, it would still be a harsh and unjust rule in its application to the consumer. It would exclude inferior grades of tea, although entirely genuine and wholesome, and would compel the poorer classes es of citizens to purchase higher grades of tea, presumably more costly and possibly less to their liking. To that extent it would interfere with the natural liberty of the citizen and the choice of commodities, which it is the general policy of the law to extend rather than to restrict.

(6) *The proper construction of the word "quality" may be ascertained by reference to the title of the act.*

Since the word "quality" has an abstract and relative meaning, we may properly refer to the

title for its true construction in this special legislation.

U. S. *v.* Fischer, 2 Cranch., 358, 386.
Coosaw Mining Co. *v.* So. Carolina, 144, U. S., 550, 563.
Church of Holy Trinity *v.* U. S., 143; U. S., 457.

(7) *The word quality is to be construed in connection with the accompanying words "purity" and "fitness for consumption."*

It is a fundamental principle in the construction of statutes that the meaning of a word may be ascertained by reference to the meaning of other words with which it is associated. The rule is embodied in the familiar maxim *noscitur a sociis.*

Arthur *v.* Moller, U. S., 365.
Aikin *v.* Wasson, 24 N. Y., 482.

The word "quality" therefore should be given a meaning corresponding with the words "purity" and "fitness for consumption," as indicating the quality of the tea in relation to its wholesomeness as an article of food.

(8) *Quality must be given a sense to which uniform standards can be practically applied.*

The Secretary of the Treasury is required to fix and establish uniform standards of purity, quality and fitness for consumption of all kinds of teas imported. If quality means the strength and character of the tea, as indicated by taste and flavor, meaning thereby its general excellence as a beverage, no uniform standard of all kinds of teas is possible.

IV.

Upon the construction of the statute as claimed by these intervening parties it is constitutional and valid.

It is urged with great force by the appellants that the words "purity," "quality" and "fitness for consumption" are each used in the act in a comparative sense: that Congress did not enact that impure teas should not be imported or that teas of any specified quality or of any specific degree of unfitness for consumption should be excluded, but that it did confer upon the Secretary of the Treasury the power to determine what degree of impurity, what special qualities and what peculiarities of unfitness for consumption should suffice to place an embargo on importation, and that hence no rule of action was prescribed by Congress, but the subject was turned over at large to the Secretary for legislation. This position, if sustained, is fatal to the validity of the enactment. The only answer to it is one which is fatal to the construction contended for by the Government. The answer which should be made to it we think is as follows: The Act is a health regulatiou; it was designed to prevent the importation of unwholesome teas; the standards which the Secretary of the Treasury was directed to establish of "purity, quality and fitness for consumption" were in each of these particulars limited and defined by the purpose of the legislation. The Secretary was to ascertain as a fact what degree of impurity in tea was consistent with wholesomeness, what qualities in other attributes of tea were in like manner consistent with wholesomeness, and what teas were fit for consumption by reason of their wholesomeness. Here was, doubtless, a wide range of investigation and discrimination intrusted to the Secretary, but it centered in the ascertainment of a fact, to wit, the

wholesomeness of the tea as a food, and having, by the aid of the board of experts, fixed the fact the standards became like the regulations a mere mode of putting into operation the rule of law enacted by Congress to take effect upon the ascertainment of the fact. We submit that upon this construction of the Statute and upon this construction only can the act be declared constitutional.

In Conclusion.

The parties presenting this brief are desirous of obtaining a judicial construction of the statute which will enable them to conduct their business intelligently within the law. In the opinion of the United States Circuit Court of Appeals in the Bidwell case, the statute is construed only indirectly. It is said that the intention of the Senate by the amendment of the statute was as quoted above, "to "authorize the adoption of uniform standards by "the Secretary of the Treasury which would be ade- "quate to exclude the lowest grades of tea whether "demonstrably of inferior purity or unfit for con- "sumption *or presumably or possibly so because* "*of their inferior quality.*" The Court does not explain how this intention of the Senate amendment was embodied in the act as passed. Concededly, teas which are demonstrably of inferior purity or fitness for consumption are to be excluded by the standards and are to be excluded in administration because not equal to the standards, but what is meant by the words "or presumably or possibly so be- "cause of their inferior quality." The word "so," of course, refers to the inferior purity or unfitness for consumption, hence the words will read, "or "presumably or possibly of inferior purity or unfit "for consumption, because of their inferior qual- "ity." The quality then is only presumptive evidence of purity or unfitness for consumption. Then it comes to this that teas are to be rejected which are

demonstrably impure and unfit for consumption or presumably so by reason of their quality. The word "quality" then has reference to the associated words "purity and fitness for consumption." The Secretary of the Treasury is not authorized to establish standards upon the ground of general excellence or upon any other ground, except the wholesomeness of the tea, and while he may regard inferior quality as affording a presumption as to the wholesomeness of the tea, it is still nothing but evidence and evidence bearing upon the crucial question of wholesomeness.

The tea trade are entitled to know whether this is the meaning of the statute, if it is they are entitled to hold the Secretary of the Treasury up to that meaning of the statute by whatsoever methods are available to them. They assume that if this Court shall finally construe the statute as they contend, it should be construed, that the Secretary of the Treasury will conform his standards to such construction.

JAMES L. BISHOP,
For William J. Buttfield and others.